Fiscal Note 2011 Biennium

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Bill #	HB0650		**Title:**	Mineral lease conveyance backup withholding tax
Primary Sponsor:	French, Julie		**Status:**	As Introduced

- ☐ Significant Local Gov Impact
- ☑ Needs to be included in HB 2
- ☐ Technical Concerns
- ☐ Included in the Executive Budget
- ☐ Significant Long-Term Impacts
- ☐ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2010 Difference	FY 2011 Difference	FY 2012 Difference	FY 2013 Difference
Expenditures:				
General Fund	$508,692	$161,892	$139,880	$142,942
Revenue:				
General Fund	$375,392	$768,238	$785,840	$803,942
Net Impact-General Fund Balance:	($133,300)	$606,346	$645,960	$661,000

Description of fiscal impact: This bill would require income tax withholding on the calculated gain on the transfer of mineral leasehold interest by non-residents. Non-residents with mineral lease payments would be required to report their Montana source income to the department, increasing revenue to the general fund.

FISCAL ANALYSIS

Assumptions:

1. Mineral development agreements generate revenue in two ways: through royalties when the minerals are produced and when the right to develop the rights is sold in the form of rentals and leases. Both of these forms of revenue on mineral developments in the State of Montana are Montana source income. There is already withholding on mineral royalties, but there is no withholding on the transfer of mineral leases.
2. The Trust Land Management Division of the Department of Natural Resources and Conservation administers 4,802 mineral agreements on 2 million acres of state land. The total rental income for state owned lands was $6,159,841 in FY 2008.
3. There are 606 producing oil and natural gas wells on land administered by the Trust Land Management Division. The Board of Oil and Gas Conservation reports that there were 4,316 producing oil wells and 6,454 producing natural gas wells in the state in FY 2007; therefore, 5.63% of producing oil and natural gas wells are on state land (606/(4,316 + 6,454)).

4. For the purpose of this fiscal note, it is assumed that state lands managed by the Trust Land Management Division account for 5.63% of the mineral leases in Montana. For fiscal note purposes, mineral leases revenue is assumed to be comparable to FY 2008 with an inflation factor equal the change in the Consumer Price Index as forecast by Global Insight of 1.01% in FY 2009, -0.82% in FY 2010, 2.32% in FY 2011, 2.29% in FY 2012, and 2.30% in FY 2013.
5. Assuming the growth rates in assumption 4, total payments would be $109.667 million in FY 2010, $112.217 million in FY 2011, $144.788 million in FY 2012 and $117.432 million in FY 2013.
6. The Board of Oil and Gas reports that there are 10,770 oil and gas wells in the state, of which 606 wells are on state trust land and 1,447 wells are on property owned by the U.S. government administered by the Bureau of Land Management (BLM). In total, 19.06% of the oil and gas wells ((606 + 1,447)/10,770) are on property owned by the federal or state government.
7. It is assumed that 19.06% of mineral lease payments are received by federal and state government, and not subject to tax.
8. The private sector receives 80.94% of mineral lease payments (100%-19.06%). The total taxable mineral lease payments would be $88.765 million in FY 2010, $90.828 in FY 2011, $92.910 in FY 2012 and $95.050 in FY 2013.
9. Between January 29, 2008 and January 27, 2009, the BLM issued 96 permits to produce oil and gas in Montana. Fifty permits were issued to out-of-state entities, or 52.08% (50/96). It is assumed that all corresponding mineral lease payments are received by out-of-state entities.
10. It is assumed that 50% of non-residents with unreported income file income tax returns. Withholding would force all non-residents that receive mineral lease payments to file an income tax return and report that income.
11. It is assumed that the calculated gains are equal to 50% of the total payments made for mineral leasehold.
12. It is assumed that this income is taxed at a tax rate of 6.5%.
13. Income tax revenue is deposited in the general fund. This bill is effective on passage and approval and applies to all mineral lease transfers after December 31, 2009. This is half way through FY 2010, so general fund revenue would increase by half the amount in FY 2010. The following table summarizes the calculations for the additional revenue generated by HB 650.

Estimated Additional Tax Revenue

	FY 2010*	**FY 2011**	**FY 2012**	**FY 2013**
Prior Year State Lease Revenue	$6,221,770	$6,170,719	$6,314,174	$6,458,849
Inflation Factor	-0.82%	2.32%	2.29%	2.30%
Estimated State Lease Revenue	$6,170,719	$6,314,174	$6,458,849	$6,607,630
Wells on State Land	5.63%	5.63%	5.63%	5.63%
Estimated Lease Payments in Montana	$109,604,246	$112,152,291	$114,722,005	$117,364,656
Non Government Percentages	80.94%	80.94%	80.94%	80.94%
Taxable Payments	$88,713,677	$90,776,065	$92,855,991	$94,994,952
Out of State Percentage	52.08%	52.08%	52.08%	52.08%
Subtotal	$46,202,083	$47,276,174	$48,359,400	$49,473,371
Percent Unreported	50.00%	50.00%	50.00%	50.00%
Calculated Gain Percentage	50.00%	50.00%	50.00%	50.00%
Subtotal	$11,550,521	$11,819,044	$12,089,850	$12,368,343
Tax Rate	6.50%	6.50%	6.50%	6.50%
Additional Tax Revenue	**$375,392**	**$768,238**	**$785,840**	**$803,942**

*FY 2010 revenue is reduced by 50% as described in assumption 13.

14. The department would hire 2.00 FTE to process and audit the additional returns that would be filed with the department. This would increase personal services expenditures by $119,500 per fiscal year. Annual operating costs for the 2.00 FTE would be $17,392 annually and the department would spend $9,800 in the first year for office furniture and equipment.
15. The department would hire outside experts to help locate transactions and train staff. This would cost $50,000 in FY 2010 and $25,000 in FY 2011.
16. GenTax, the computer software used by the department to administer state taxes, would need to be modified to accommodate the withholding returns. This would cost $300,000 in FY 2010.
17. The real estate transfer certificate would need to be updated at a cost of $6,000 in the first year.
18. Forms for remitting the withholding tax payments, the annual conveyance statement and the reporting of payments by the purchaser to the conveyor would need to be developed at a cost of $6,000 in the first year.

	FY 2010 Difference	**FY 2011 Difference**	**FY 2012 Difference**	**FY 2013 Difference**
Fiscal Impact:				
FTE	2.00	2.00	2.00	2.00
Expenditures:				
Personal Services	$119,500	$119,500	$122,488	$125,550
Operating Expenses	$379,392	$42,392	$17,392	$17,392
Equipment	$9,800	$0	$0	$0
TOTAL Expenditures	$508,692	$161,892	$139,880	$142,942
Funding of Expenditures:				
General Fund (01)	$508,692	$161,892	$139,880	$142,942
Revenues:				
General Fund (01)	$375,392	$768,238	$785,840	$803,942
Net Impact to Fund Balance (Revenue minus Funding of Expenditures):				
General Fund (01)	($133,300)	$606,346	$645,961	$661,000

Sponsor's Initials	*Date*	*Budget Director's Initials*	*Date*